

Mapping Victim Restitution in Iowa

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Overview

1 Victim Restitution Legal Summary

2 Victim Restitution System Flow

Iowa's Victim Rights Act includes the right to restitution.

“Victims have a right to recover pecuniary damages”

(§ 915.100)

Examples of victim rights codified in Chapter 915:

- Restitution
(§915.100) (and Chapter 910, §§910.1-910.15)
- A victim advocate
(§915.20)
- Victim compensation
(§§915.80-95)
- Registration, notification, and rights in criminal proceedings
(§§915.10-915.23)
- Victim impact statement
(§915.21)

A statement demonstrating out-of-pocket losses is submitted to the court, which may set the amount of restitution ordered.

Restitution generally covers out-of-pocket losses directly related to a crime.

A victim suffering “pecuniary damages” (i.e. those not covered by an insurer) as a result of criminal activity carried out by another individual is eligible to seek restitution. (§910.1)

County attorneys prepare statements of damages.

Depending on when the statement is completed, which is based on when damage amounts are available, the restitution statement may be provided to:

- The presentence investigator and appear in the PSI,
- The court at the time of sentencing, or
- The court within 30 days after sentencing. (§910.3)

The court, based on its review of the statement, may set the amount of restitution to be ordered and attaches it to the sentence.

- Known as the “restitution plan,” it specifies the person to receive the restitution, and supplemental orders may be made. (§910.2 and §910.3)

Restitution generally is for direct expenses related to the crime that victims themselves have covered.

Out-of-pocket losses that are generally covered:

- Medical expenses;
- therapy costs;
- prescription charges;
- counseling costs;
- lost wages;
- expenses related to participating in the criminal justice process (such as travel costs and child care expenses);
- lost or damaged property; and
- insurance deductibles.

The following are generally not covered:

- Punitive damages
- Damages for pain, suffering, mental anguish, and loss of consortium.

Iowa statutes use “restitution” as an umbrella term covering an array of legal financial obligations (LFOs).

“Restitution” sometimes also refers to:

- Fines, penalties, and surcharges, and
- Contribution of funds for:
 - Local anticrime organizations providing assistance to law enforcement in the case,
 - Payment of victim compensation program reimbursements,
 - Payment of restitution to public agencies,
 - Court costs and correctional fees,
 - Attorneys fees, and
 - Incurred expenses, such as investigative costs incurred by the Medicaid fraud control unit. (§910.1)

Also, in Iowa, if the criminal act caused the death of another person, “restitution,” for at least \$150,000, is ordered to be paid to the victim’s estate or heirs. (§910.3B)

Although a broader analysis of LFOs including those sometimes referred to as “restitution” is merited, this project’s scope involves victim restitution for pecuniary damages only.

Although the statutory term "restitution" has many composite parts, statutes explicitly prioritize victim restitution first.

Statutes indicate that victims “shall be paid in full pursuant to an order of restitution, before”:

- Fines,
- Penalties,
- Surcharges,
- Victim compensation program reimbursement,
- Public agencies,
- Court cost including county correctional fees, and
- Attorneys fees. (§910.2 and §915.100.e)

Statutes detail criminal justice agency development and management of restitution payment plans.

A restitution order serves as a condition of supervision and work release.

- Failure to comply with a restitution payment plan represents a supervision violation. (§910.4.1, §910.5.12, and §910.5.4.)

Statutes require the development of restitution payment plans for people who owe upon intake to:

- Probation, (§602.8107.2.a)
- Jail or alternative facility, (§910.4.2) and
- Prison, work release, halfway houses, and parole. (§910.5 and §904.904)

Statutes allow for restitution payment plans to be modified to reflect current circumstances involving income and other factors.

- After the payment plan is approved and submitted to the clerk of court, it is forwarded to the victim that is owed restitution. (§910.6)
- At any time during a period of supervision or incarceration, a person owing restitution is entitled to petition for a hearing regarding the restitution plan or the payment plan. (§910.7)

Delinquent victim restitution is combined with other delinquent court debt, and the statute details debt collection processes.

“Court debt” is an expansive term consisting of: “all fines, penalties, court costs, fees, surcharges, forfeited bail, victim restitution, court-appointed attorney fees or expenses of a public defender, state and county correctional fees, and surcharges.” (§602.8107.1.a)

Court debt is deemed delinquent if unpaid per the payment plan after 30 days following the assessment.

- If the person was ordered to pay the debt in full, it becomes delinquent if left unpaid after 30 days.
- If the debt was ordered to be paid in installments, failure to pay an installment within 30 days after due date results in delinquency. (§602.8107.2.d)

Delinquent court debt is assigned either to a county attorney collection unit or the private debt collector.

- In counties where the county attorney has been registered (i.e. filed a “notice of full commitment”), delinquent court debt is assigned to them. (§602.8107.3.a)
- If the county attorney hasn’t filed a notice, the delinquent debt is assigned to the private debt collector, Linebarger. (§602.8107.3.a)

Statutes detail restitution management for county attorney collection units and the private debt collector

The statute details how non-victim restitution collections made by collection units are to be distributed

- 28 percent of collections are disbursed to the county general fund, and the remaining 72 percent to the state. (§§ 602.8107.4.c.1-2)
 - Victim restitution is among the LFOs exempted from the formula, however.* (§ 602.8107.4.a)
- The statute provides further guidance involving formulas, based on the county population, for collections made above a threshold amount. (§602.8107.4.1)

For the private debt collector, the statute allows a surcharge to be imposed.

- The collector may impose a surcharge of “up to 25 percent” of the delinquent court debt. (§602.8107.5.b)
- Because the surcharge is applied to all delinquent court debt, restitution appears to be subject to the surcharge.

*Other LFOs excluded from the formula are victim compensation fund, criminal penalty surcharge, sex offender civil penalty, drug abuse resistance education surcharge, Department of Administrative services liability offsets, and county sheriff administrative costs and room and board.

Statutes refer to collection methods available to agencies managing victim restitution and other LFOs.

Initial conversations with stakeholders have identified some of the collection methods employed, which appear in the statutes:

- Suspension of a driver's license or refusal to renew vehicle registration. (§3201.210A and §321.40.4)
 - People who establish or reestablish payment and begin paying may have their drivers license and vehicle registration restored. (§3201.210B and §321.40.4)
- Other methods include wage garnishments and assignments, requiring a person to report to the county attorney's office, and making phone calls and issuing letters as reminders.

The statute leaves open the methods available to the private debt collector:

- The collector is able to use "any debt collection methods including but not limited to attachment, execution, or garnishment." (§602.8107.5.e)

Probationers who fail to comply with a restitution payment plan may be subject to sanctions, including:

- A contempt hearing in a court,
- A revocation of probation, and
- An extension of the period of probation. (§910.4.1)

Department of Corrections policies and practices guide the management of restitution payment plans.

The DOC website lists restitution management practices for people under its custody:

- “Collections are deducted from allowances paid to inmates, credits to inmates’ accounts deposited from outside sources, or money earned from working while incarcerated.”
- “The DOC collects 20% of these monies and sends to the clerk of court in the county where restitution was ordered.”
- A DOC administrative rule indicates that restitution deductions are to be forwarded to the clerk of court in the county of commitment on a quarterly basis. (201—20.10[904,910])

The following statutes relating to inmate work direct that a portion of earnings be collected for restitution payment plans:

- Inmate work program. (§904.702),
- Iowa State Industries (§904.801),
- Private industry employment (§904.809),
- Halfway houses (§904.904), and
- Work release (§904.905).

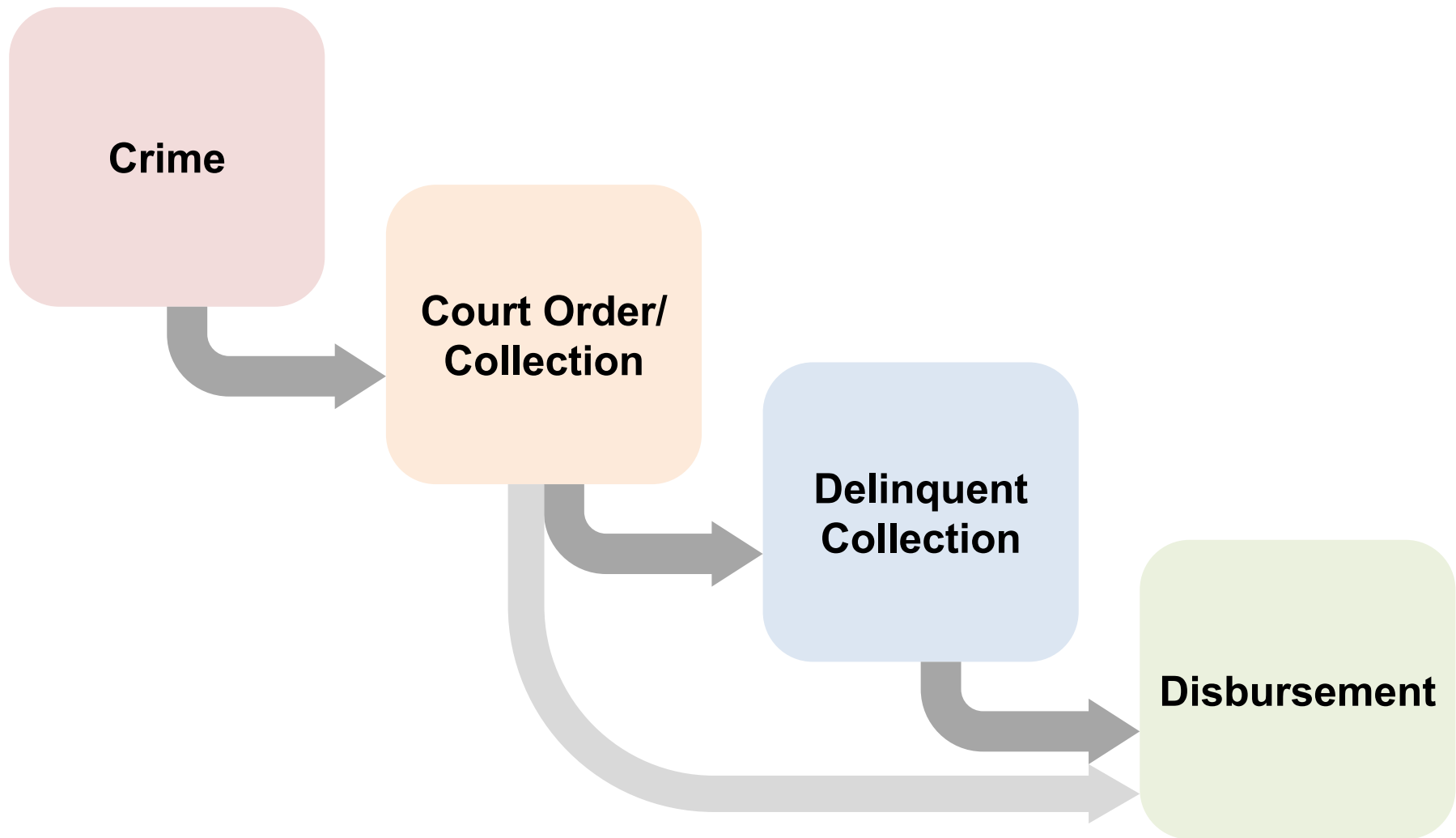
Deductions for restitution collections are drawn from inmate accounts. (§904.702)

Overview

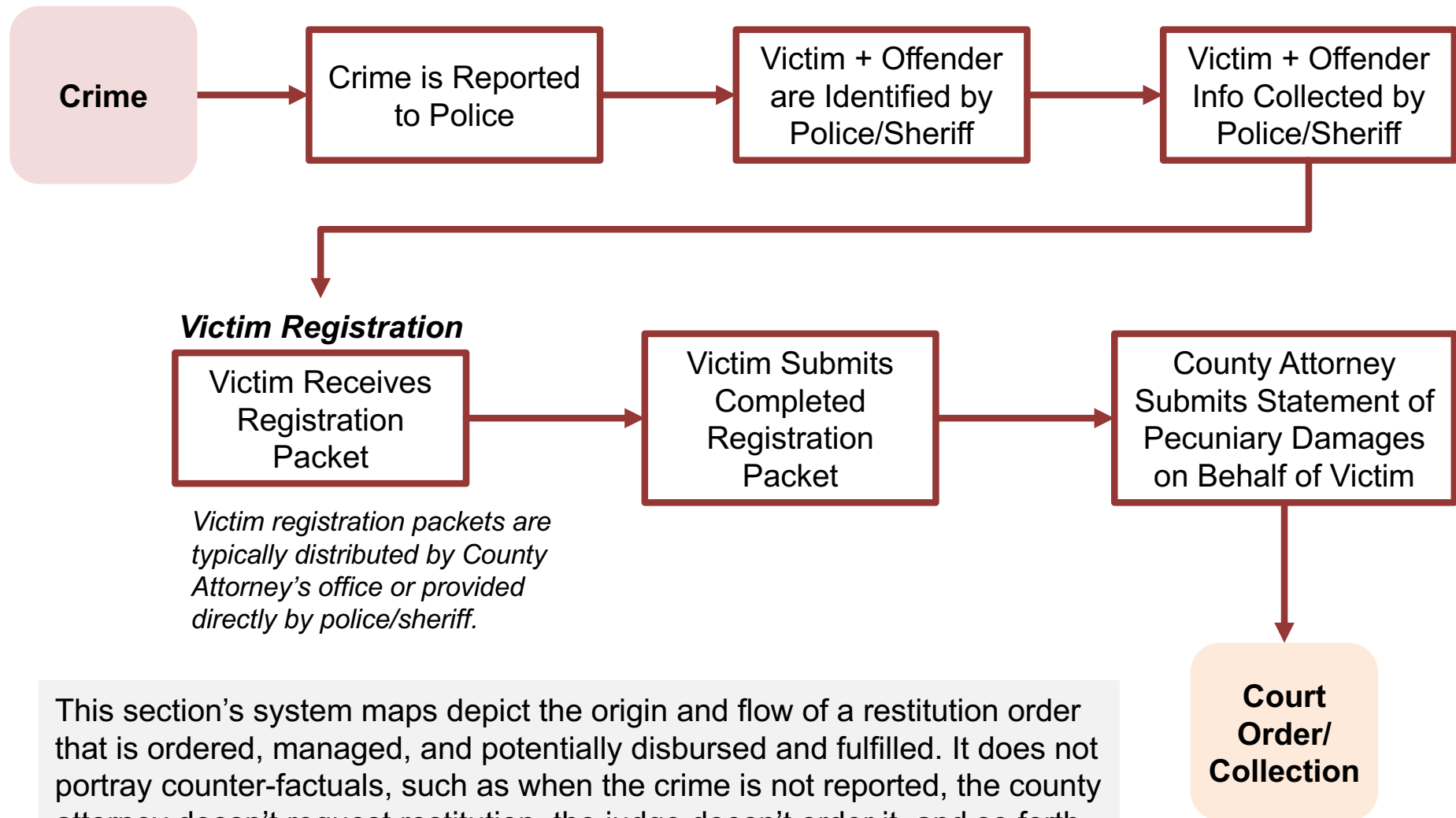
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2 Victim Restitution System Flow

Iowa Victim Restitution Mapping Overview



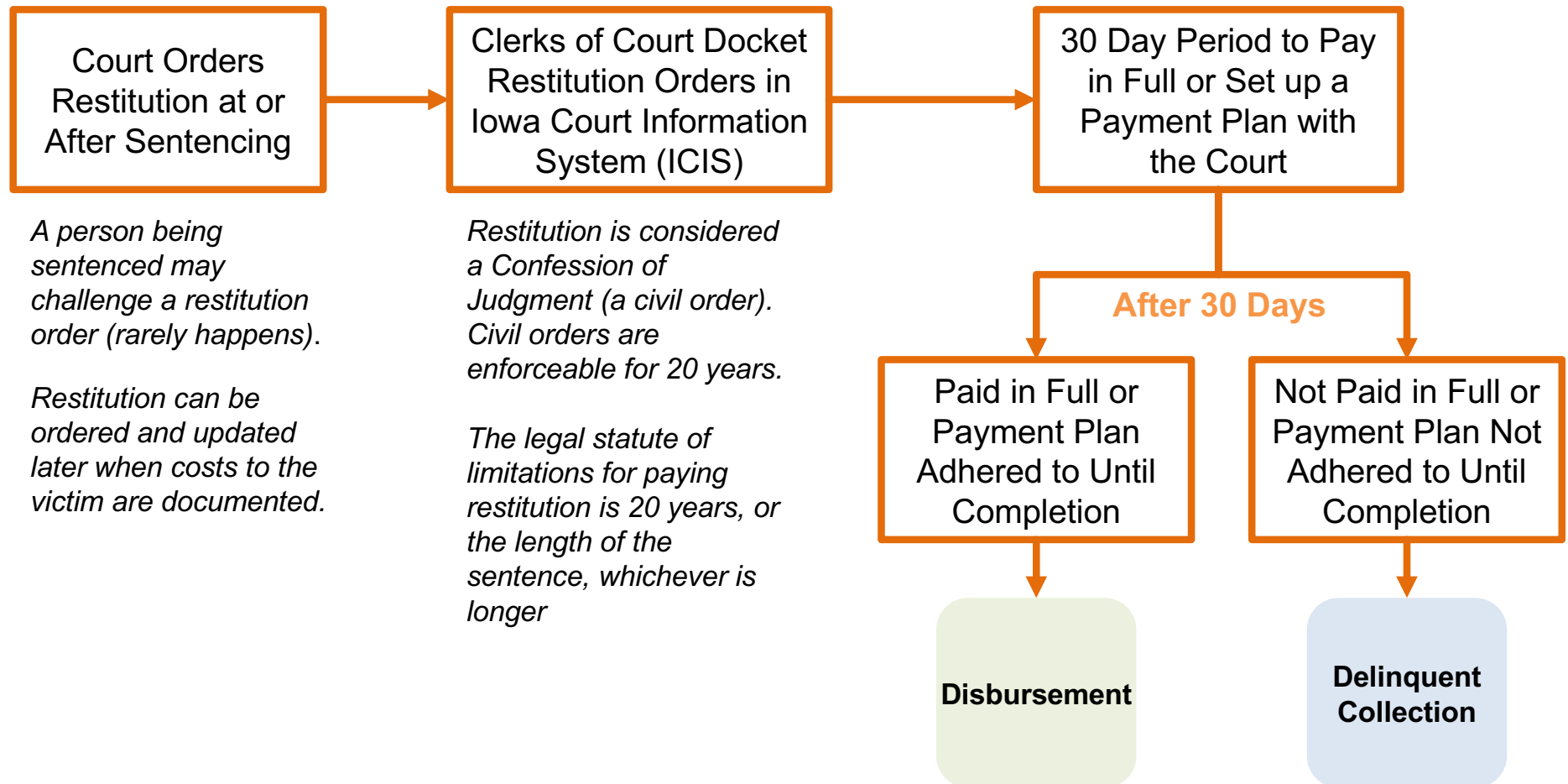
Crime and Filing for Victim Restitution



This section's system maps depict the origin and flow of a restitution order that is ordered, managed, and potentially disbursed and fulfilled. It does not portray counter-factuals, such as when the crime is not reported, the county attorney doesn't request restitution, the judge doesn't order it, and so forth. Nor does it show the possibility that restitution is not collected or disbursed to the victim. This is done to provide greater clarity and consistency to the maps.

Restitution Orders and Establishing Payment with the Court

Court Order/Collection



Two Former Processes for Delinquent Collections

Delinquent Collection

Previous Process 1

Pre-July 2015

After 30 Days

Restitution Order Not Paid in Full or Payment Plan Not Adhered to Until Completion

Day 31

Centralized Collection Unit (CCU)

CCU assessed a 10% surcharge on payments collected.

After 60 Days with CCU

County Attorney Collection Unit May Petition for Case

After 1 Year with CCU

Private Debt Collector

Disbursement

Previous Process 2

July 2015 to May 2016

After 30 Days

Restitution Order Not Paid in Full or Payment Plan Not Adhered to Until Completion

Day 31

Private Debt Collector

Private Debt Collector assesses a 25% surcharge on payments collected.

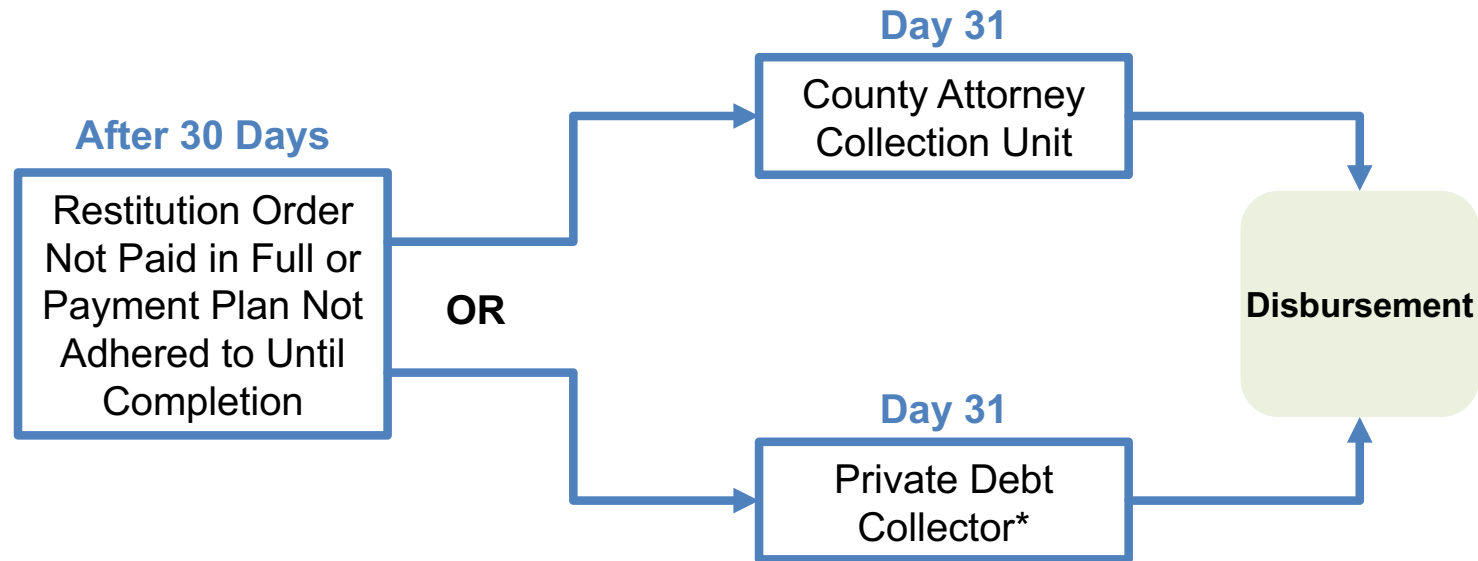
After 60 Days with Private Debt Collector

County Attorney Collection Unit May Petition for Case

Disbursement

Delinquent Collections – Current Process

Delinquent Collection



Private debt collection operates in counties that do not have a county attorney collection unit.

Private Debt Collector assesses a 25% surcharge on payments collected.

* Currently the private debt collector in Iowa is Linebarger Goggan Blair & Sampson, LLP (Linebarger), who receives outstanding court debt information daily from ICIS.

Overseers of Payment Plans

Delinquent Collection

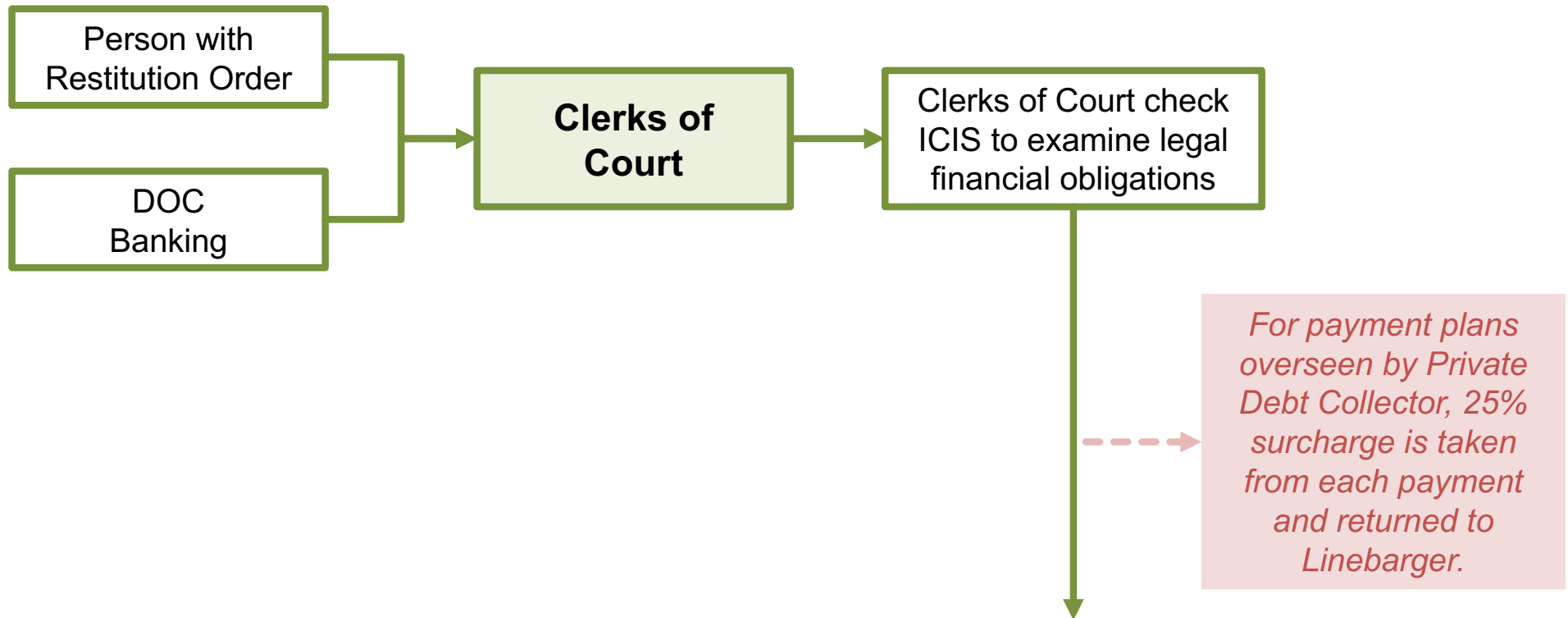
	Establishing Payment Plans	Payment Collection	Modifying Payment Plans
COUNTY ATTORNEY COLLECTION UNITS	Oversees payment plans for those with court debt in their jurisdiction, unless they are on previously established payment plans.	People make payments directly to the Clerk of Court.	County Attorney Collection Unit can coordinate with probation officers and other entities in monitoring payments.
PROBATION	Probation officer has 90 days to develop payment plan which is shared with Clerk of Court. Officer then monitors probationer payments.	Probationer makes payments directly to the Clerk of Court.	When probationer's circumstance/finances significantly change, new payment plan must be submitted to the court for approval.
DOC	Oversees collection, with DOC banking deducting 20% of earnings while incarcerated.	DOC banking sends checks for debt to County Clerks on a quarterly basis.	DOC may modify payment plans if deemed appropriate.
PRIVATE DEBT COLLECTOR (Linebarger)	Private debt collector oversees delinquent collections in counties where the County Attorney does not have a collection unit.	People makes payments directly to the County Clerk of Court.	Private debt collector has a 25% surcharge for the life of the debt owed. County Clerks returns 25% of each payment received to the private collector.

Note that CCU may still be receiving some limited types of payment on collections initiated prior to Senate File 510.

Submission of Payment to Clerks of Court

Disbursement

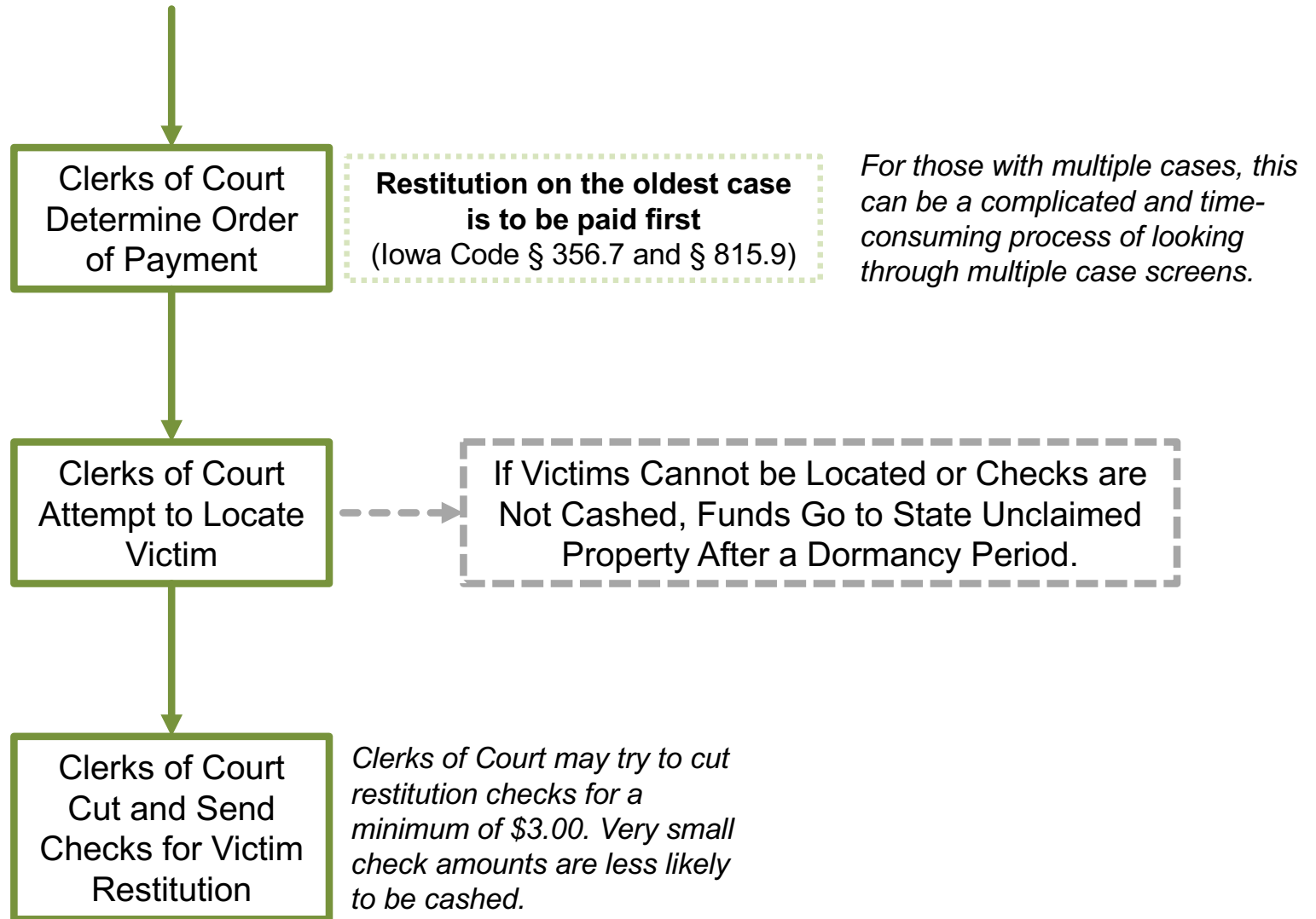
Regardless of timing of the payment (paid in full, on a payment plan, delinquent or not delinquent), and no matter who may be overseeing payments and payment plans (courts, County Attorney Collection Units, private debt collector, probation, jail, DOC, etc.*), all funds for pecuniary damages are gathered and disbursed through clerks of court.



**CCU may still be receiving some limited types of payment on collections initiated prior to Senate File 510.*

Order of Payment and Disbursement

Disbursement



Thank You

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